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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,187	02/04/2002	Catherine A. Pterski	460.2100USU	7584

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EXAMINER

DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/067,187

Applicant(s)

PITERSKI ET AL.

Examiner

Gregory R. Del Cotto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amend. filed 11/3/03.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-46 is/are pending in the application.
- 4a) Of the above claim(s) 45 and 46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

1. Claims 1-13 and 15-46 are pending. Applicant's arguments and amendments filed 11/3/03 have been entered.

Applicant's election of Group I in the response filed 11/3/03 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 45 and 46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the response filed 11/3/03.

Priority

Applicant has amended the first sentence of the specification to claim priority under 35 USC 119(e) to a US provisional application. Thus, priority has been granted.

Objections/Rejections Withdrawn

The following objections/rejections as set forth in the Office action mailed on 7/10/03 have been withdrawn:

The rejection of claims 1-21, 24-27, 29-36, 39, and 40 under 35 U.S.C. 102(b) as being anticipated by Fowler et al (US 5,720,961) has been withdrawn.

The rejection of claims 22, 23, 38, 41, and 42 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fowler et al (US 5,720,961) has been withdrawn.

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The rejection of claims 1-44 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-48 of copending Application No. 10/097057 has been withdrawn in light of the filing of a terminal disclaimer.

Claim Objections

Claims 1-13 and 15-44 are objected to because of the following informalities:

With respect to claim 1, the Markush group of moisturizers is listed under the surfactant system where it appears that this Markush group should be listed after "a moisturizer system" as recited by instant claim 1.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-13 and 15-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler et al (US 5,720,961).

Fowler et al teach a nonabrasive personal cleansing composition comprising from about 0.1% to about 20% of insoluble particles having a mean particle size diameter from about 1 micron to about 75 microns, from about 0.05% to about 40% of a surfactant selected from the group consisting of nonionic surfactant, anionic surfactants, cationic surfactants, amphoteric surfactants, zwitterionic surfactants, etc, from 0% to 50% of an emollient, and from about 20% to 99.85% water. Suitable nonionic surfactants include the condensation products of alkylene oxides with fatty acids, polyhydroxy fatty acid amide surfactants, etc. Suitable anionic surfactants include alkyl and alkyl ether sulfates, suitable cationic surfactants include quaternary ammonium surfactants, suitable amphoteric and zwitterionic surfactants include alkyl imino acetates and iminodialkanoates, betaines, sultaines, etc. See column 8, line 30 to column 10, line 35.

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Additionally, suitable emollients include C8-C30 alkyl esters of C8-C30 carboxylic acids, C1-C6 diol monoesters and diesters of C8-C30 carboxylic acids, isopropyl myristate, isopropyl palmitate, stearyl alcohol, behenyl alcohol, etc. See column 11, line 30 to column 13, line 6. Also, additional components such as humectants, pH adjusters, preservatives, skin-conditioning agents, sequestrants, etc., may be added to the compositions. Suitable skin conditioning agents include glycerol, urea, etc. See column 13, line 50 to column 14, line 25. Additionally, preferred compositions contain 0.1% to 10% by weight of a material such as salicylic acid, lactic acid, eugenol, etc. See column 14, lines 20-30.

Specifically, Fowler et al teach a lathering cleansing composition containing water, 4% polyethylene beads, 3% glycerin, 3% sodium lauryl sulfate, 2% sodium cocyl isethionate, 2% cocamidopropyl betaine, 0.5% polyquaternium-10, 0.4% sodium lauryl sulfate, 0.4% phenoxyethanol, 0.1% methylparaben, 0.1% propylparaben, 0.1% disodium EDTA. See column 16, lines 40-60.

Additionally, Fowler et al teach that further suitable emollients include myristyl lactate, stearyl lactate, isostearyl lactate, cetyl lactate, palmityl lactate, etc. Note that, the Examiner asserts that these lactate compounds would be encompassed by "lactic acid salt" as recited by instant claim 1.

Fowler et al do not teach a cleaning composition containing a surfactant system, a moisturizer system, a solvent system, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

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It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing a surfactant system, a moisturizer system, a solvent system, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teaching of Fowler et al suggest a cleaning composition containing a surfactant system, a moisturizer system, a solvent system, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Response to Arguments

With respect to Fowler, Applicant states that Fowler does not disclose a moisturizer system, let alone a moisturizer system comprising two or more moisturizers. Applicant further states that Fowler does not disclose a personal care composition useful for cleansing and moisturizing the skin and that Fowler merely lists skin-conditioning agents as an optional component which may be added to the claimed cleansing composition. In response, note that, instant claim 1 recites a "cleanser composition" which is exactly what the invention of Fowler et al is directed to as indicated by the title, "Skin Cleansing Composition". Furthermore, Fowler et al teaches the use of components such as glycerol and lactate acid salts which have moisturizing properties and are the same compounds as glycerin and lactate acid salts as recited by the instant claims. The Examiner maintains that Fowler et al would suggest cleaning compositions having the same moisturizing properties as the composition recited by the

instant claims because Fowler et al teach compositions containing the same components in the same proportions as the compositions recited by the instant claims. Note that, while skin conditioning agents may be listed as an optional component of the compositions of Fowler et al, the teachings of a reference are not limited to the preferred embodiment and the Examiner maintains that one of ordinary skill in the art would have been motivated to use skin-conditioning agents in the cleansing compositions taught by Fowler et al.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

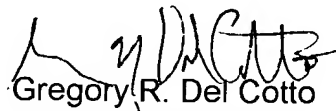
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
January 25, 2004